

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
16 DHR 03576

<p>Jacqueline Tate, Petitioner,</p> <p>v.</p> <p>NC Department of Health and Human Services Division of Medical Assistance, Respondent.</p>	<p style="text-align: center;">FINAL DECISION ORDER OF DISMISSAL</p>
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This matter coming on to be heard pursuant to Respondent's Motion for Summary Judgment filed herein on August 25, 2016; Petitioner appeared *pro se*, and the Respondent was represented by Assistant Attorney General Kimberly S. Murrell. Having considered Respondent's motion, along with supporting documentation, statements of the parties, and all other matters of record appearing in this action, the undersigned makes the following findings of fact:

1. On February 24, 2016, Respondent mailed a letter to Jacqueline Tate denying the request for an undue hardship waiver of Respondent's estate recovery claim against the estate of Doris Tuck.
2. The reason given in the letter for the denial of Jacqueline Tate's undue hardship waiver request is that Jacqueline Tate is not an heir of Doris Tuck as defined in N.C.G.S. § 28A1-1(3) and her assets total more than \$12,000, including real property located at 2410 Shirley Street, Durham, NC.
3. On April 8, 2016, the Petitioner, Jacqueline Tate, filed a Petition for a Contested Case Hearing with the North Carolina Office of Administrative Hearings to contest the Department's denial of her request for an undue hardship waiver.
4. Petitioner is the granddaughter of Doris Tuck.
5. Petitioner's mother, Gloria Tate, is the legal heir of Doris Tuck.
6. Petitioner is a lineal descendent and devisee but is not an heir of Doris Tuck.
7. Petitioner has not alleged that this property is her sole source of income.
8. Petitioner owns a home located at 2410 Shirley Street, Durham, NC 27705, with a tax value in the amount of \$85,804.00.

Based on the foregoing facts, the undersigned makes the following conclusions of law:

1. To the extent that the findings of fact contain conclusions of law, or that the conclusions of law are findings of fact, they should be so considered without regard to the given labels.

2. Pursuant to the North Carolina Medicaid State Plan, an heir is said to be dependent on assets in the estate of the deceased for financial support or residence when the following criteria are met:

1. Real or personal property included in the estate is the sole source of income for a surviving heir and his or her spouse and related family members in his or her household and the gross income available to the surviving heir and his or her spouse and related family members in his or her household is below 200 percent of the federal poverty level.
2. Recovery would result in forced sale of the residence of a surviving heir who is living in and has continuously lived in the property since the decedent's death and who lived in the property for at least 12 months immediately prior to and on the date of the decedent's death and who would be unable to obtain an alternate residence because the gross income available to the surviving heir and his or her spouse and related family members in his or her household is below 200 percent of the federal poverty level and assets of the surviving heir and his or her spouse and related family members of his or her household are valued below twelve thousand dollars (\$12,000).

3. In accordance with 10A NCAC 21D .0502 and the North Carolina State Plan for Medical Assistance, recovery may not be waived unless an heir meets these criteria for undue hardship.

4. Under 10A NCAC 21D .0502 and the North Carolina State Plan for Medical Assistance, an undue hardship waiver of a Medicaid estate recovery claim is only available to an heir of a deceased Medicaid beneficiary.

5. Under N.C.G.S. § 28A-1-1(3), heir is defined as "any person entitled to take real or personal property upon intestacy under the provisions of Chapter 29 of the General Statutes."

6. Jacqueline Tate is not an heir of the decedent because her mother, Gloria Tate, is still living and is the legal heir to the Estate of Doris Tuck.

7. Pursuant to the North Carolina Medicaid State Plan and 10A N.C.A.C. 21D .0502, in order to qualify for an undue hardship waiver of a Medicaid estate recovery claim, an heir must be able to show that he or she is unable to obtain an alternate residence because his or her household assets are valued below twelve thousand dollars (\$12,000.00).

8. Petitioner's real and personal property assets exceed the \$12,000.00 asset limit to qualify for a waiver of hardship under the North Carolina State Medicaid Plan and the North Carolina Administrative Code.

9. Because Petitioner is not an heir of the deceased Medicaid beneficiary and her household assets are not valued below twelve thousand dollars (\$12,000), she does not qualify for an undue hardship waiver of Respondent's estate recovery claim.

10. Respondent properly denied Petitioner's request for an undue hardship waiver of Respondent's estate recovery claim.

11. Respondent did not substantially prejudice Petitioner's rights and did not exceed its authority or jurisdiction, act erroneously, fail to use proper procedure, act arbitrarily or capriciously, or fail to act as required by law or rule when it denied Petitioner's request for an undue hardship waiver of Medicaid estate recovery under the rules of 10A NCAC 21D .0500 *et seq.* and the North Carolina State Plan for Medical Assistance.

FINAL DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, and pursuant to the North Carolina Rules of Civil Procedure, Respondent's Motion for Summary Judgment is hereby granted as there is no genuine issue of material fact, and this contested case is hereby **DISMISSED** and the file referenced above shall be closed.

NOTICE

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 1st day of September, 2016.

Philip E Berger Jr.
Administrative Law Judge